

A Guide To Insurance Issues For Homeowner, Condo And Civic Associations



Info and tips for
officers and
members of
community
associations in
Delaware

From

Matthew Denn

Delaware's Insurance Commissioner

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A Message From Delaware's Insurance Commissioner Matthew Denn

Delaware's communities are served by numerous homeowner groups. These groups provide organization and governance at the most local level—the neighborhood. Sometimes they arbitrate minor community matters and sometimes they weigh in on broad public policy debates at the city, county or state level. But they are always working to make Delaware a great place to live.

Whether organizing a weekend festival or providing permanent recreational areas, community associations have responsibility — and liability — in the decisions they make. We compiled this guide based on some of the most commonly asked questions about insurance we receive regarding these groups.

If your group encounters a specific situation not covered by this guide, please feel free to contact our office at 1-800-282-8611 or delawareinsurance.gov. We're always ready to help.

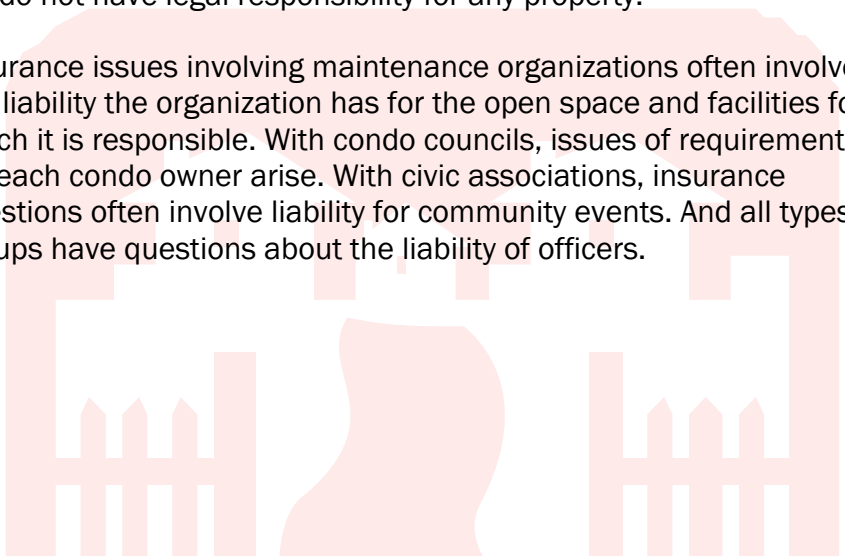
A handwritten signature in black ink that reads "Matthew Denn". The signature is stylized with a large, sweeping "M" and a cursive "Denn".

The Basics

There are three main types of homeowner and resident associations that deal with insurance issues, and it's important to know which one yours is.

- A **maintenance organization** is a legal entity, comprised of all lot owners in a subdivision and membership is mandatory for those owners. Membership in a maintenance organization is part of the deed when a house is purchased, and the dues owed to them are legally enforceable. The primary responsibility of a maintenance corporation is maintaining the open space and common facilities located within the community.
- A **condominium council** is comprised of all the owners in a condominium building. Condominium councils are recognized in state law and are charged with the maintenance of common elements in a building and the collection of funds for common expenses.
- A **civic association** is voluntary, with area residents able to choose whether to participate or not. Many civic associations serve the function of providing a collective voice to issues that affect their communities and often are the sponsors of community events, such as fairs, sales or festivals. Civic associations usually do not have legal responsibility for any property.

Insurance issues involving maintenance organizations often involve the liability the organization has for the open space and facilities for which it is responsible. With condo councils, issues of requirements for each condo owner arise. With civic associations, insurance questions often involve liability for community events. And all types of groups have questions about the liability of officers.



Liability

Delaware state law **exempts maintenance organizations from liability for civil damages** resulting from creating and maintaining parkland. The law applies to any negligent act or omission of the organization, its staff and its contractors. However, the law also states that immunity is provided to the extent any civil damages “exceed existing liability insurance coverage applicable to the act or omission or the minimum liability insurance coverage required by law if no such coverage exists.” There is no clear requirement in state or county codes that groups have liability insurance.

That said, having a general liability policy would meet the implied expectation in state law that there is some liability coverage beyond which the organization is granted immunity. Also, having a liability insurance policy would create a duty for the insurance company to defend the organization if a lawsuit were filed over an injury or accident. It is recommended that organizations seriously consider a liability policy.

Volunteers for associations and other groups with IRS non-profit status do have some protection under state law from being personally sued for negligent action or lack of action while acting on the non-profits. But language in this same section of state law makes clear that the non-profit can be held liable for the actions of the volunteer.

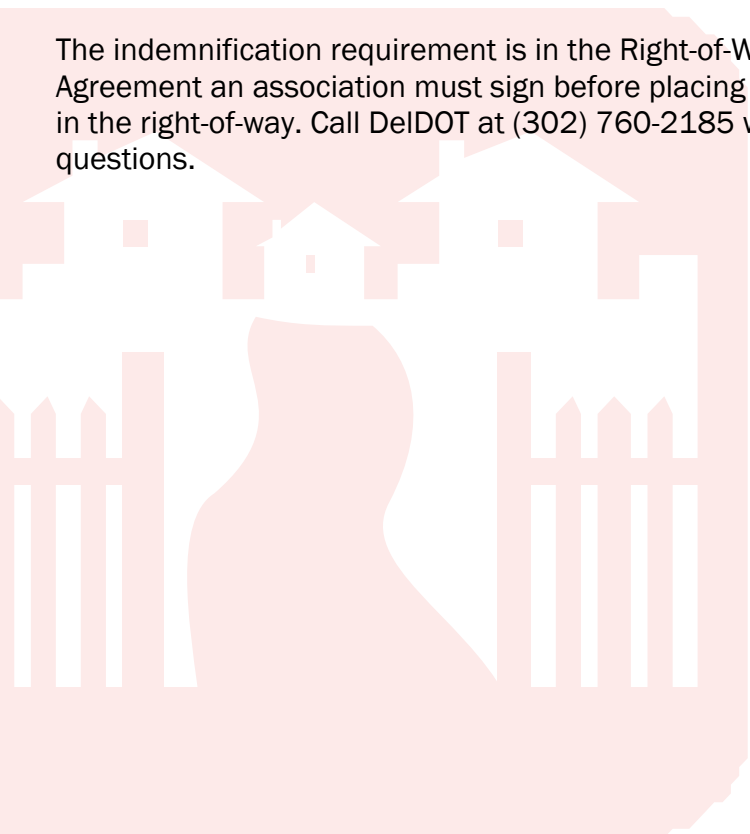
An association that holds a special event, such as a fair or festival, is advised to consider **event liability insurance**. These policies, which are limited to the time period of the event, can provide a significant amount of liability coverage at relatively low cost. They are especially advisable for organizations that have chosen not to have a general liability insurance policy, given the increased attendance and possible increased risk for injury or accidents that an event might bring.

Liability insurance and event insurance policies are generally available from the same insurance companies that offer homeowner, auto and other types of property and casualty insurance.

Also on the subject of liability, neighborhood and civic associations

should know that the state Department of Transportation requires associations **indemnify DeIDOT** for any damages resulting from the location of subdivision signs, landscaping or anything else the association puts in the state right-of-way. That means the association takes responsibility for injury, damage or accident involving the sign or landscaping owned by the association — regardless of whether or not an association has liability insurance.

The indemnification requirement is in the Right-of-Way Use Agreement an association must sign before placing a sign or project in the right-of-way. Call DeIDOT at (302) 760-2185 with any questions.



Property

Many homeowner organizations own some amount of property, whether it is simply an entrance sign at a community entrance, some open space with recreational equipment, a community clubhouse, or a condominium building with many common areas. As with a homeowner's individual property, an organization's property should be insured so it can be fixed or replaced in the event of loss or damage.

The insurance on property could be in the form of a **property insurance policy**, or it could be in the form of an amount of money the organization sets aside in the event of something happening, which would make the organization **"self-insured."** Obviously, the more property an organization has control of, the less viable it would be to remain self-insured. However, for some organizations with a small amount of property, simply setting money aside or agreeing to assess the property owners in the event of a loss might be less costly than paying the premiums on a property insurance policy for years. Some organization bylaws require insurance policies, so self-insurance may not be an option.

Questions often arise, especially in condominiums, about what items and areas are covered under the organization's property insurance policy and what is covered under individual unit owner's policies. Make sure your board and owners are clear on the lines if you purchase a policy.

Some condo councils have told the Department of Insurance that their property insurance company has asked the council to inspect condo units for smoke detectors. While a condo council might require smoke detectors in a building's code of regulations or post flyers in the buildings encouraging residents to obtain them, council members cannot, without the owner's permission, physically enter the individual condos to check and an insurance company should not make such a request.

Most companies that offer homeowners and auto insurance will offer property insurance to community associations.

Directors & Officers

Also known as D&O, directors and officers insurance provides coverage to the organization against claims that the board and leaders made negligent or bad decisions. The reality is that not all your organization's decisions will be popular to all property owners and you may be sued over them.

A **D&O policy** can include both current board and committee members as well as past directors and officers, the organization itself and managers. It can include payment for legal defense costs as well as payment of losses in a lawsuit. The details and coverage of D&O policies can vary substantially from one company to another, so compare policies you are considering carefully.

A 2007 survey of the top 15 specialty liability insurance companies in Delaware found the following sell D&O policies: National Union Fire Insurance, Zurich American Insurance and Ace American Insurance.

Fidelity

One area of insurance for community associations that is often overlooked is fidelity coverage, also known as fidelity bond or employee dishonesty coverage. A fidelity policy insures against **theft from the organization by employees, property managers or even directors and officers.**

Fidelity policies are usually written based on the amount of money being handled by your association, including operating funds, reserves and investments.

It is also important for an association to make sure that your association's service providers, such as trash collection, management firms, landscaping or pool maintenance, are bonded and insured.

A 2007 survey of companies found the following that offer fidelity insurance: National Union Fire Insurance, Great American Insurance and St. Paul Mercury.

Workers Compensation

A community association that has direct employees will need to provide workers compensation insurance for them. However, even if an association does not have employees, it **may want to consider having a workers compensation policy** or may be required to by its governing documents.

The reason is that if a company that does work for your organization on a contract basis (say, snow removal or landscaping) does not have workers comp coverage and an employee is injured while working for your organization, the employee may try to collect from you. That is one reason why your organization ought to require proof of workers compensation insurance from any company you hire.

If you hire part-time or seasonal employees and treat them as independent contractors for the purpose of not providing benefits — including workers comp coverage, that relationship may be interpreted to be employment by a workers compensation commission if the worker is injured and otherwise uninsured. That is another reason to consider workers compensation insurance.

A list of companies that offer workers compensation insurance in Delaware is available from the Delaware Compensation Rating Bureau at www.dcrb.com or (302) 654-1435.

Flood

Commissioner Denn constantly urges homeowners to consider flood insurance because **flood damage is not covered under standard homeowner policies**. Some community associations — mainly condominium councils that insure their buildings — need to consider purchasing separate flood insurance for the same reason.

As with individual homeowners, flood insurance is available to eligible condominium councils from the federal government through the Residential Condominium Building Association Policy. Under this policy, condominium associations can purchase coverage up to an amount equal to \$250,000 multiplied by the number of units in the building or the replacement cost of the building, whichever is less. This way, coverage is provided for each unit without the burden of purchasing policies for each unit separately.

Eligible buildings include garden apartment-type construction, town houses, row houses, and single-family detached buildings owned by the association, as long as 75 percent of the units are used for residential purposes. Residents of the individual units are then advised to purchase contents coverage separately — up to \$100,000 — to ensure that their personal property will be covered.

It is possible that failure to purchase adequate flood insurance — especially for a building or property in a high flood risk area — might be considered by some property owners to be an error or omission by a community association board and could become the subject of a lawsuit.

Information about federal flood insurance is available from the National Flood Insurance Program website at www.floodsmart.gov or by calling 1-888-379-9531.

Other Types

Some other types of insurance that might be considered by community associations:

- **Ordinance or law insurance.** Suppose the property insurance you have on a community clubhouse or condominium will pay to rebuild or repair your property to the way it was. But then suppose that your property was built 20 or 30 years ago and building codes, land use regulations and laws have changed since then. In that case, an ordinance or law policy would pay the difference between the work your property insurance policy would pay for and the work needed to bring the property up to the new requirements.
- **Umbrella policy.** An umbrella policy can provide coverage over and above the multiple specific insurance policies your association may have, like liability, directors and officers, and fidelity. If something happens and the maximum coverage under one of those specific policies does not completely cover your loss, an umbrella policy could cover the remainder. Ask the insurance agent or company that provides your other insurance policies about the possibility of an umbrella policy.

Need Help?

The Delaware Insurance Commissioner's Office is here to help if you have questions about or problems with your insurance coverage or insurance company.

Questions about insurance or complaints about an insurance company or insurance agent can be made to the Commissioner's Consumer Services division by phone, by fax, by letter, by email or with an online complaint form:

**1-800-282-8611 toll-free in Delaware
or (302) 674-7310**

(302) 739-6278 fax

**841 Silver Lake Blvd.
Dover, DE 19904**

Email: consumer@state.de.us

Website: www.delawareinsurance.gov

Links To More Information

A few websites with advice, articles and discussions regarding community association insurance issues:

- CALonline.org — Website of the Community Associations Institute
- Communityassociations.net — Links to articles from around the country regarding condominium, homeowner and property owner associations
- Floodsmart.gov — Federal government info on flood insurance, including a tool showing the flood risk for any address



Types Of Insurance Community Associations Might Need

What kind of insurance should your community association have?

- **Liability** — In case someone is injured or an accident occurs on association property or at an association event
- **Property** — To protect against loss of or damage to association property
- **Directors & Officers** — To provide defense and payment in case of a lawsuit over association decisions
- **Fidelity** — In case an employee or officer steals association funds
- **Workers Compensation** — In case an employee — or perhaps even a contractor — is injured on the job
- **Flood** — To pay for flood damage, since flooding is not covered under standard homeowner or property policies
- **Ordinance Or Law** — To cover the cost of repairing or rebuilding up to current building codes, not older ones
- **Umbrella** — To provide coverage above the limits of many of the specific policies listed above

Check inside for descriptions and discussions of each of these types of insurance.

Get more tips and information about insurance from Insurance Commissioner Matthew Denn at www.delawareinsurance.gov